

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DARNELL BLACK, SR.,  
Plaintiff,  
v.  
JAMES MARCELO, et al.,  
Defendants.

Case No. CV 18-05064-RGK (RAO)

## ORDER ACCEPTING REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the First Amended Complaint (“FAC”), Defendants’ Motion to Dismiss, all of the other records and files herein, and the Report and Recommendation of United States Magistrate Judge (“Report”) issued on December 16, 2019. Further, the Court has made a *de novo* determination of those portions of the Report to which objections have been made.

Included among Plaintiff's objections to the Report is a new claim of an ADA violation. When a claim is asserted for the first time in objections to the Report and Recommendation of United States Magistrate Judge, the Court has discretion whether to consider it. *Brown v. Roe*, 279 F.3d 742, 744-45 (9th Cir. 2002). Here, the Court exercises its discretion not to consider the claim because, as with the FAC's Section 1983 claims addressed in the Report, the new ADA claim is pleaded in a conclusory fashion.

1           Accordingly, the Court hereby accepts and adopts the findings, conclusions,  
2 and recommendations of the Magistrate Judge.

3           **IT IS ORDERED** that Plaintiff's First Amended Complaint is DISMISSED  
4 with prejudice.

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6           DATED: January 21, 2020

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8           R. GARY KLAUSNER  
9           UNITED STATES DISTRICT JUDGE

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